

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|--------------------------------|
| CHARLES RUST, | § |
| | § |
| Defendant Below- | § No. 588, 2009 |
| Appellant, | § |
| | § |
| v. | § Court Below—Superior Court |
| | § of the State of Delaware, |
| STATE OF DELAWARE, | § in and for New Castle County |
| | § Cr. ID 0904021944 |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: March 15, 2010

Decided: March 17, 2010

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 17th day of March 2010, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) On May 6, 2009, the defendant-appellant, Charles Rust, pled guilty and was sentenced for one count of possession of a controlled substance. Thereafter, Rust violated the terms of his probation by failing to report. On September 30, 2009, Rust admitted to the charge at his violation of probation (VOP) hearing. The Superior Court sentenced Rust to six months incarceration with no probation to follow. This is Rust's appeal from his VOP sentence.

(2) Rust's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Rust's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Rust's attorney informed him of the provisions of Rule 26(c) and provided Rust with a copy of the motion to withdraw and the accompanying brief. Rust also was informed of his right to supplement his attorney's presentation. Rust has not raised any issues for this Court's consideration. The State has responded to the position taken by Rust's counsel and has moved to affirm the Superior Court's judgment.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.*

(4) This Court has reviewed the record carefully and has concluded that Rust's appeal is wholly without merit and devoid of any arguably

* *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

appealable issue. We also are satisfied that Rust's counsel has made a conscientious effort to examine the record and the law and has properly determined that Rust could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs
Justice